



State of New Jersey

Department of Environmental Protection

Division of Water Quality

Municipal Finance and Construction Element

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July 15, 2005

New Jersey Environmental Infrastructure Financing Program ENVIRONMENTAL DECISION DOCUMENT ENVIRONMENTAL EMERGENCY RESPONSE PROJECTS

To All Interested Government Agencies and Public Groups:

The New Jersey Department of Environmental Protection (Department) is issuing this generic Environmental Decision Document to enable the Environmental Infrastructure Financing Program (EIFP) to provide funding for the correction of environmental infrastructure related emergency conditions that endanger public health and welfare. The Department recognizes that such emergencies result in substantial pollution of the environment (such as collapse of a wastewater line) and/or substantial curtailment of the functions of infrastructure (such as delivery of drinking water). Such circumstances require an immediate response for which a complete technical and environmental review in advance of construction, in accordance with the current procedures and the program rules codified at *N.J.A.C. 7:22*, is not possible and thus emergency projects were not eligible for funding under the EIFP.

The Department has determined that the correction of conditions that pose a substantial threat to the public health, safety and welfare as quickly as possible is in the public interest and has minimal overall adverse impacts to the environment and to cultural resources. Further, the provision of financial assistance to help defray the cost of actions to correct these emergency conditions is also in the public interest. This Environmental Decision Document enables local government units (such as municipalities, sewerage and utilities authorities) and water purveyors to correct unanticipated emergency conditions without further environmental review, subject to compliance with certain criteria, and to remain eligible to apply for financial assistance under the Environmental Infrastructure Financing Program. The public will be notified of all decisions by the Department to provide funding for projects that satisfy the provisions set forth in this generic Environmental Decision Document.

This decision document establishes the Department's environmental review process for correction of emergency conditions but does not constitute a commitment of Federal or State funds for any specific emergency project. Given the nature of this Environmental Decision Document, the Department is providing a 30-day review period for comment on the emergency project approval provisions specified herein. This is consistent with federal regulation 40 CFR Part 6.107(f) "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" which requires that the public be afforded a

30-day period to comment on the development of a new category for the exclusion of environmental review. After evaluating any comments received, the Department will make a final decision as to whether to proceed with implementation of this process as described herein. Minor clarifications and/or changes may be included herein without additional notice. If substantive comments regarding this document are received and the Department determines that these comments should be incorporated within the process and result in major changes to the document, the Department will issue a revised Environmental Decision Document for which the public will be afforded a 30-day comment period.

Only actions to correct the failure of an essential portion of the infrastructure system needed to restore service which occur after July 15, 2005, the date of the issuance of this document, shall be eligible for emergency pre-award approval and subsequent financial assistance. Emergency conditions and/or the repair thereof must also meet the criteria as set forth in the attached EIFP Generic Environmental Decision Document for Statewide Environmental Emergency Response Projects. Upon submittal of subsequent documentation, including demonstration of compliance with the specified criteria, a Public Notice will be issued stating that the Department has determined that the proposed project is eligible for EIFP funding and has satisfied the provisions of this document. The Notice will also provide a description of the project's emergency circumstances, scope of work undertaken and cost. A mailing list for distribution of the Notice will be developed to include all parties affected by the proposed action.

Comments on this proposal should be addressed to: Anthony Puniello, Ph.D., Section Chief, Technical Services Section, Municipal Finance and Construction Element, P. O. Box 425, Trenton, New Jersey, 08625-0425.

Very truly yours,

A handwritten signature in black ink, reading "Stanley V. Cach", with a long, sweeping horizontal line extending to the right.

Stanley V. Cach, P.E., P.P.
Assistant Director
Municipal Finance and Construction Element
Division of Water Quality

Attachment: EIFP Generic Environmental Decision Document for
Statewide Environmental Emergency Response Projects

**NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE FINANCING PROGRAM
GENERIC ENVIRONMENTAL DECISION DOCUMENT FOR
ENVIRONMENTAL EMERGENCY RESPONSE PROJECTS
LOCATION: STATEWIDE**

I. Proposed Action

A. Purpose

The purpose of this proposed action is to enable the Environmental Infrastructure Financing Program (EIFP) to provide funding for the correction of emergency conditions that endanger public health, safety and welfare. The New Jersey Department of Environmental Protection (Department) recognizes that such environmental infrastructure related emergencies result in substantial pollution of the environment (such as collapse of a wastewater line) and/or substantial curtailment of the functions of infrastructure (such as delivery of drinking water). Such circumstances require an immediate response, for which a complete technical and environmental review in advance of construction, in accordance with the current Financing Program procedures for implementing the rules adopted at *N.J.A.C. 7:22*, is not possible, and are thus not eligible for funding by the EIFP. The Department has reviewed this issue in detail and believes that immediate response to correct emergencies and preserve the eligibility of these costs is in the public interest. Therefore, the Department has developed a process and specific eligibility criteria, herein described, to accomplish these purposes while ensuring environmental protection. This process is consistent with the provisions set forth in the federal regulations 40 CFR Part 6 "Procedures for the Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act."

B. Scope

Emergency conditions may be caused by structural or mechanical failure, sabotage or act of God. Projects that are eligible for emergency approval under this provision are limited to those where the failure of one or more components of the system has occurred; the anticipation, or the potential, of a system to fail is not eligible for emergency funding. In addition, only the actions directly needed to correct the failure of an essential portion of the infrastructure system needed to restore service are eligible for emergency pre-award approval; components that may be otherwise desirable but not specifically required to correct the emergency condition(s) are not eligible for emergency pre-award approval.

The Department anticipates that the most likely emergency condition to be encountered under this provision is a conveyance/distribution line failure, resulting in sewage overflow or an interruption of drinking water supply. However, other wastewater, drinking water and storm water infrastructure problems involving storm sewer lines, equipment for pumping stations or for treatment plant equipment processing units, combined sewer systems or facilities that reduce nonpoint source pollution may also be eligible. Equipment that may be procured to address emergency projects includes generators, pumps or other stationary or mobile equipment needed as an integral component of the repair. The criteria for projects that are eligible for emergency funding are provided to Section III. C. below.

C. Effect of Proposed Action on the Environment

The Department believes that the construction activities associated with projects that satisfy the qualification and repair criteria as specified in III.C. below will have little or no potential to adversely affect the environment and that any impacts are outweighed by the need to address the emergency conditions. Further, it is believed that the emergency repair criteria enable the Department to make the determination that emergency projects will not have a significant, permanent adverse impact on significant cultural resources. These determinations can be made without further environmental and cultural resource review because eligible corrective actions, as set forth in Section III.C. below, involve construction in areas previously disturbed by the initial installation of the failed component(s), and because such repairs will generally involve in-kind repair or replacement and as such would not result in any increases in system capacity. These criteria conform to those set forth in 40 CFR Part 6.107 (Categorical Exclusions). In addition, the emergency action(s) undertaken will eliminate the serious negative impacts to the environment and public health that are actually occurring as a result of the failure.

D. Procedure and Use of this Generic Environmental Decision Document

The procedure outlined in this document is intended to address projects that are exceptions to the types of projects traditionally considered for funding by the EIFP. This generic Environmental Decision Document (EDD) serves to notify the public of the intention of the Department to fund emergency projects, and the general procedures that must be followed by project sponsors and the Department. The Department will utilize this generic EDD to fund individual emergency projects without additional notice for public comment. As individual projects are submitted for funding, they will be reviewed for conformance with the eligibility criteria and other applicable requirements specified herein. Those projects that meet these requirements will be funded by the Department upon a project-specific notification that describes the emergency conditions addressed, corrective measures taken, project cost, and the Department's determination of funding eligibility.

When an infrastructure emergency occurs, the project sponsor must first notify the Department by telephone or in writing of the situation as soon as possible, and describe the location and nature of the emergency, and the proposed corrective actions. This is so the Department can ensure that the provisions of this EDD will be adhered to, thus preserving a project's eligibility to receive funds. In the course of completing corrective actions, the project sponsor must commit to taking steps to minimize the effect of such work on the environment, to the extent possible given the nature and location of the emergency condition. The design requirements at *N.J.A.C. 7:22-10.11* can provide guidance in this area. The project sponsor will be required to submit additional documentation within 30 days of occurrence of the emergency providing more detailed information about the emergency condition and the corrective action. The project sponsor will be required to demonstrate that the failure was unanticipated, and that the repairs were necessary to preserve public health, safety and welfare.

As indicated above, only those actions needed to correct the failure of an essential portion of the infrastructure system to restore service are eligible for emergency funding under this provision. In addition, all other aspects of the project beyond those activities needed to restore service will be eligible as a separate loan project. The project sponsor will be required to submit a commitment letter and complete planning, design and loan application in accordance with the requirements of the EIFP's regular funding program as set forth in *N.J.A.C. 7:22*. The project sponsor must also satisfy the provisions set forth in Section III. C. below.

II. Alternatives Considered

A. No Action

The No Action alternative would result in the continuation of the failure of one or more components of the system, a situation that is detrimental to the environment and/or to public health, safety and welfare. As this is unacceptable, the No Action alternative is, therefore, rejected.

B. Funding Emergency Repair (Selected Plan)

This alternative is selected because it corrects the emergency condition and thus protects the environment and/or enhances public health, safety and welfare.

III. Eligibility for Level 1 Review and Emergency Repair Pre-Award Approval

A. Emergency projects that meet the specified eligibility and repair/replacement criteria are eligible for a Level 1 environmental review in accordance with the procedures specified herein because the projects would involve rehabilitation, repair or the in-kind replacement of existing environmental infrastructure facilities that would not create a new discharge, reduce the level of treatment, or result in an increase in the quantity of flow of an existing discharge.

B. Emergency projects are not expected to have any characteristics that would disqualify them for a Level 1 environmental review:

1. Emergency projects are expected to have a positive effect on the human environment because they will correct conditions that present a substantial and immediate threat to the environment and/or to public health, safety and welfare;
2. Emergency projects are not expected to have a permanent adverse or a significant temporary adverse direct or indirect impact on cultural resources, endangered or threatened species or designated habitats, wetlands, floodplains, important farmlands or other environmentally critical areas;
3. The scope of emergency projects is limited; therefore, they are not expected to have significant effects on user cost. Further, since the government entity or purveyor has no reasonable alternative but to correct the emergency situation, the expenditure of funds is unavoidable; and

4. The correction of emergency conditions that present a substantial and immediate threat to the environment and/or to public health, safety and welfare is not expected to result in significant adverse public comment; rather, overwhelming support would be anticipated.
- C. To be eligible for emergency pre-award approval and subsequent financial assistance under the EIFP, corrective actions must also meet the following criteria:
1. The failure of one or more components of the system must have occurred, resulting in an interruption of essential service; the potential of a system to fail in the future will not be eligible for emergency pre-award approval;
 2. For wastewater or stormwater projects, the Assistant Director (or designee) of the Municipal Finance and Construction Element of the Department must be informed by telephone or in writing, preferably prior to undertaking any corrective actions, or as soon as possible after construction has commenced, of the project location, the nature of the emergency, and the anticipated extent of work to be performed. This notification is required to assure that Program requirements will be adhered to and that the applicant's eligibility for funding is not jeopardized. For water supply projects, the Assistant Director of Water Supply Operations, Division of Water Supply, must be notified. Based upon the information relayed and the project sponsor's commitment to maintain conformance with the criteria of this section, the Assistant Director (or designee) of the MF&CE or Water Supply Operations, Division of Water Supply will make a determination whether or not to give a pre-award approval to proceed;
 3. Only the actions needed to address the emergency conditions themselves required to restore service are eligible under this provision. Components that are desirable but not directly required to restore service or that are for O&M purposes are not eligible under the emergency approval provisions. These additional components must conform with the traditional priority list placement, planning, design, application and construction requirements of the EIFP rules adopted at *N.J.A.C. 7:22*;
 4. Failed component(s) must have the same operating capacity and placed in the same trench or within the same structure as the original component(s);
 5. The project sponsor must take steps to comply with the provisions of the EIFP's design requirements at *N.J.A.C. 7:22-10.11*, including minimizing the areal extent of construction impact and clearing, avoidance of impacts to natural features and critical areas to the extent possible, soil erosion and stockpiling measures, dust and noise control, dewatering and implementing construction restoration measures such as seeding and replacement of vegetation. In addition, the following construction procedures are prohibited: dumping of spoil material in environmentally sensitive areas, the operation of equipment within environmentally sensitive areas unless the location of the emergency situation makes this unavoidable, pumping of silt-laden water into waterbodies, damaging vegetation outside of the right-of-way, disposal of construction debris in environmentally sensitive areas, alteration of the stream channel, open burning of debris, use of chemicals for dust control and use of asphaltic mulch binders;

6. Within 30 calendar days of the emergency occurrence, the project sponsor must submit a comprehensive report including the following: a) nature/location of the emergency, need for repair, description of the initial efforts to restore service/repair the damage, detailed description of the repair needed with costs, and a list of any required permits; b) adequate information to demonstrate compliance with the provisions of items 1-5 of this section; c) a description of any restoration measures already implemented and those still to be completed; and d) a description of the long term solution if additional work is needed and/or desirable, to be funded as a separate project pursuant to the requirements of the regular EIFP. In addition, a Certification must be provided by the wastewater or water system stating that there was an emergency situation and that the repairs were required.

Based on this information, the Department will determine if any other mitigation measures are warranted, and will advise the project sponsor accordingly. Upon submittal of documentation, including demonstration of compliance with the specified criteria, a Public Notice will be issued stating that the Department has determined that the proposed project is eligible for EIFP funding and has satisfied the provisions of this document. The Notice will also provide a description of the project's emergency circumstances, scope of work undertaken and cost. A mailing list for distribution of the Notice will be developed to include all parties affected by the proposed action. The applicant is responsible for advertising this Notice and for making the planning and decision documentation available for public review.

Notwithstanding the issuance of a pre-award approval through this emergency pre-award process, this is not a commitment of Federal or State funds. Additional program requirements must be met, including the project sponsor's filing of the loan application, financial review to ensure repayment and legislative approval of the project costs.

Any costs incurred by the project sponsor that fail to meet these criteria will not be eligible for subsequent funding under the EIFP. The Department reserves the right to deny financial assistance if it is determined that an emergency is not justified or that the corrective actions are inconsistent with the provisions specified herein.

IV. Conclusion

The Department believes that actions to correct emergency conditions that meet the criteria identified in this Environmental Summary will, by their nature, have little or no adverse impact on the environment. The potential for impacts will be further minimized by requiring project sponsors to implement construction restoration measures in accordance with Program design requirements at *N.J.A.C. 7:22-10.11*. In addition, the actions will eliminate the existing threat to public health, safety and welfare and will minimize adverse impacts to the environment and cultural resources that are occurring as a result of the emergency condition.

As indicated in Section III.C. above, when the Department has determined that a project has satisfied the criteria described above, a Public Notice, the final step under the Department's environmental review process, will be issued, which will conclude the Department's public notification process for the expedited handling of emergency projects.